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Honorable Stephen L. Johnson, Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: EFAB Report on the Use of Captive Insurance as Financial Assurance Tool in
Office of Solid Waste and Emergency Response Programs

Dear Administrator Johnson:

At the request of the Agency, the Environmental Financial Advisory Board (EFAB) has convened a workgroup to address questions concerning the financial assurance requirements for Office of Solid Waste and Emergency Response (OSWER) programs. These requirements address closure, post-closure, corrective action and other aspects of the Resource Conservation and Recovery Act (RCRA) Subtitle C, D and I programs and also are viewed as guidance with regard to Superfund response action. On January 11, 2006, EFAB submitted to the Agency its initial findings concerning use of the financial test and corporate guarantees. We were pleased to receive on February 21, 2006, a letter from the Assistant Administrator of OSWER thanking EFAB for its work and highlighting elements of our analysis that were of particular assistance. We are grateful for this prompt and substantive response, which we have taken into account in approaching the use of captive insurance for financial assurance.

As we noted in our letter of January 11, 2006, the financial assurance requirements and the issues concerning them are complex and multi-faceted. For this reason, the Board, working with the Agency and other interested stakeholders, is addressing financial assurance mechanisms in discrete and manageable pieces, and focusing sequentially on them. The enclosed report on captive insurance represents a second step in our efforts. We recognize that many of the issues associated with policies issued by captive insurers are also issues posed by commercial insurance. While we acknowledge that there could be benefits in assessing both at the same time, we also found some unique issues associated with captive insurance that warranted a separate review. In fact, we found some commonalities with our earlier analysis of the financial test. In effect, the methods by which a party complies with its financial assurance requirements fall within a continuum of inherent financial capacity to fulfill guaranties by unrelated third parties. We expect that commercial insurance will be the next area of focus. As we complete our review of other aspects of financial assurance, we will apprise you of our responses to the questions posed by the Agency along with our findings.

The Board was charged with addressing three questions regarding captive insurance: (1) Should there be minimum capitalization requirements for captive or other insurers who provide policies for financial assurance and, if so, what requirements would best assure funds are available for protection of the environment, including closure, post-closure, corrective action and other environmental clean-up?; (2) Should policies written by captives and commercial insurers be treated as equally acceptable mechanisms?; and (3) Should the language of policies written by captives differ in any way from those issued by commercial insurers?

In June 2004, EFAB conducted a workshop in New York City which began to explore the issues raised by the use of several financial assurance mechanisms, including captive insurance. On June 27, 2006, we convened a second workshop in New York City focused exclusively on captive insurance in which we heard from governmental and financial community representatives overseeing and evaluating the captive insurance industry, users of captive insurance, a representative of the EPA Office of the Inspector General, and State government representatives familiar with the use of captive insurance for RCRA financial assurance. We received public comment at the meeting, and subsequently have received additional written comments from business interests and State solid waste management officials.

Our work has been informed throughout by the expertise of government officials willing to share their extensive knowledge of environmental insurance. In particular, we appreciate the insights provided by EPA staff in both OSWER and OECA, and State regulators familiar with the details of both RCRA and Superfund financial assurance requirements and the structure and operations of the captive insurance industry. The active participation of expert EPA staff and representatives of five States in extended discussions at the New York City workshop and in deliberations both before and after the workshop assisted the Board in understanding the nature of and regulatory structure for captive insurance.

The Board appreciates EPA's continuing support and participation in the development of this report and the findings contained herein. If the Agency decides to go forward with the informational materials recommended by the Board, we would be pleased to work with the Agency or its designees on that effort. Meanwhile, we will continue to gather and analyze information on additional topics involving financial assurance in order to respond to the full range of questions EPA has posed to the Board.

We would be pleased to respond to any questions that you may have with regard to today's report or any other aspect of our on-going deliberations.

Sincerely,



A. James Barnes
Chair



A. Stanley Meiburg
Designated Federal Official

Enclosure

cc: Susan Parker Bodine, Assistant Administrator, Office of Solid Waste and Emergency
Response
Grant Nakayama, Assistant Administrator, Office of Enforcement and Compliance
Assistance